

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 202 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GHANCHI MATHURBHAI MOTILAL

Versus

PANCHAL HIRALAL MAGANLAL

Appearance:

MR AKSHAY H MEHTA for Petitioner

MR DF AMIN for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the tenant-original defendant.

2. The respondent-landlord had sued the defendant-tenant for a decree of eviction on various grounds viz. (i) that the tenant was in arrears of rent

of more than six months and has neglected to pay the same inspite of the statutory notice, (ii) that the landlord requires possession of the suit premises on account of his reasonable and bonafide requirements, (iii) that the tenant has acquired suitable alternate accommodation and (iv) that the tenant has without the permission in writing of the landlord erected upon the suit premises a permanent structure. The trial court, after appreciating the evidence on record, dismissed the suit of the landlord entirely on all the grounds.

3. The landlord, therefore, preferred an appeal before the lower appellate court under section 28 of the Bombay Rent Act, wherein only two grounds for decree of eviction were pressed viz. that the tenant was in arrears of rent of more than six months and that the tenant had acquired suitable alternate accommodation.

4. The lower appellate court, after reappreciating the evidence on record, confirmed the finding of the trial court, and refused to pass a decree of eviction on the ground that the tenant was in arrears of of rent of more than six months and has neglected to pay the rent, etc. In this context the lower appellate court found that since there was a dispute as to standard rent, the case would not fall under section 12(3)(a) of the Rent Act, and when the facts of the case are examined in light of section 12(3)(b) of the said Act, it is found that the tenant has made the necessary payments and has continued to deposit the rent due in court, and is, therefore, entitled to the protection of section 12(3)(b) of the said Act.

5. However, on a detailed reappreciation of the evidence on record, the lower appellate court found in favour of the landlord that the tenant had acquired suitable alternate accommodation, and that therefore the landlord was entitled to a decree for eviction on this ground. The appeal was, therefore, allowed on this ground and to the aforesaid extent.

6. It is the decision of the lower appellate court which is the subject matter of the present revision by the tenant. In view of the fact that the decree has been passed by the lower appellate court only on the ground that the tenant has acquired suitable alternate accommodation, vide section 13(1)(1), the impugned judgement of the lower appellate court requires to be examined only from that perspective and therefore I propose to deal with that limited aspect of the matter.

7. It requires to be noted that the landlord has pleaded and proved that the tenant has acquired suitable alternate accommodation, which is a plea in respect of two separate properties viz. (1) residential house in Fatehpura area, out of which the defendant-tenant obtained a portion by partition amongst his brothers, and (2) purchase of an independent property in the form a residential house by registered sale deed dated 21st October 1980.

8. The tenant did not contest the factual position that there was a partition of the ancestral property between the tenant and his brothers, and that the defendant-tenant obtained a share on such partition. However, the defendant does allege and contend that the property which came to his share in this partition was in a dilapidated condition and not habitable, and that the property is not even half the area of the suit premises and therefore it cannot be said that it is suitable nor can it be said to be suitable for residence. So far as the purchase of the property by registered sale deed dated 21st August 1980 is concerned, the tenant contended that he has no right, title or interest in this property, since it is purchased by his sons out of their separate income.

9. The son of the landlord has deposed on behalf of the landlord-plaintiff at Exh.34. He asserts that the property which came to the share of the tenant in the partition amongst the tenant's brothers is suitable for habitation and suitable for use as a residence. The said property is described as house having one room on the ground floor, with one room, latrine and bath room and a standing kitchen on the first floor. There is also a terrace over the first floor. This entire house is of RCC construction. As against this the suit premises occupied by the tenant consists of two rooms and a balcony situated on the first floor of the landlord's larger property, and that the tenanted premises is about 400 square feet in the area. The tenant in his deposition has attempted to show that he was not possessing sufficient fund for reconstruction of the property which came to his share in the partition and in any case he contends that it is constructed for the purpose of a godown and is not suitable as residence.

9.1 However, the tenant has been obliged to admit in his cross examination that a godown does not have a kitchen, does not have a chockdi and does not have a paniyara. He further admits that he had in fact applied for permission from the Municipal Corporation for

building a residential house in the portion that came to his share on partition. He further denies the extent of the area which came to his share on partition.

10. The lower appellate court has weighed the oral assertions of the contesting parties, and has further weighed the same with documentary evidence on record. The lower appellate court found that although oral evidence may be exaggerated and may or may not be reliable, the documentary evidence on record is of a nature which cannot be doubted, let alone ignored. The Commissioner's report at Exh.38 is one such document. The Commissioner's report clearly discloses that the property which came to the share of the defendant-tenant on partition consists of ground floor portion and first floor portion. This report shows that the ground floor portion was being used for storing goods and there is first floor which was used for residence, and that there is also an open terrace on the first floor. The Commissioner's report is accompanied by a sketch map which discloses that the ground floor consists of one room with a kitchen with a standing platform, and a paniyara of about 3 feet in length. This sketch also discloses that on the first floor there is a room, bathroom and latrine. It is, therefore, obvious that the tenant's oral evidence is exaggerated and requires to be disbelieved as found by the lower appellate court. The lower appellate court, therefore, rightly found that the tenant had intended to construct and in fact did construct a new house in the place of the old one which had come to his share on partition and that the new house which has been constructed by the tenant has all the amenities referred to in the map of the Commissioner and the sketch prepared by the Commissioner. Furthermore, it appears that in the house rebuilt by the tenant the area is no less than the area of the suit premises. The lower appellate court, therefore, rightly found that the tenant has acquired suitable alternate residential accommodation.

11. The lower appellate court rejected the contention of the tenant that the property built by the tenant (after acquiring the same by partition) is in fact a godown and that the first floor is not sufficient to accommodate the tenant's family. In the context of such a contention, the relevant question would merely be as to whether the reconstruction effected by the tenant was meant to be constructed for a godown or whether it is merely attempted to be shown as being used as a godown. In this context the admission of the tenant in his cross-examination is revealing. In such

cross-examination he has admitted in clear terms that he had applied for permission to construct a residential building in the portion which came to his share on partition. This admission is further strengthened against the tenant from the map Exh.74, which is a map in respect of the proposed construction. This map does not in any manner pertain to the construction of a godown. Admittedly the locality and the area in which the property is situated is a residential locality. However, the most revealing factor which militates against the intended use of the ground floor as a godown, is the fact that after the house was rebuilt by the tenant, the ground floor houses a standing kitchen and paniyara. Certainly if it was constructed with the intention of using it as a godown or even intended to be used as a godown, there would not have been a standing kitchen or a paniyara.

12. On these facts the lower appellate court found that even the ground floor was constructed for and intended use as a residence, but only for the purpose of the present suit it is sought to be shown that it is intended to be used as a godown by placing some non-residential goods in the ground floor, particularly when the construction was incomplete.

13. A further piece of evidence in the nature of corroborative evidence is found from the established fact that so far as the first floor of this building is concerned, it was in occupation of the tenant's son, and it was factually being used as a residence. When the use and occupation of the first floor by the tenant's son is seen in the context of the fact that the first floor had no kitchen, and such a standing kitchen and paniyara were found only on the ground floor, it becomes obvious that the ground floor as well as the first floor were intended to be used for residential purposes by the defendant-tenant as also his son.

14. The lower appellate court was, therefore, justified in concluding that the tenant had acquired suitable alternate residential accommodation and that therefore the landlord was entitled to a decree for possession on this ground. The judgement and order of the lower appellate court are, therefore required to be confirmed.

15. I, therefore, see no substance in the present revision which deserves to be dismissed. Accordingly the same stands dismissed. Rule is discharged with no order as to costs. Ad interim relief stands vacated.

16. At this stage learned counsel for the petitioner requests that some suitable time be granted to the petitioner in order to vacate the suit premises. Normally there could not be much objection to such a request. However, it requires to be noted that the very basis of the decree passed by the lower appellate court is that the tenant had acquired suitable alternate accommodation, which on the facts of this case is of his own ownership. This would not entitle the tenant to much sympathy. However, on purely compassionate ground the tenant is granted three months time to vacate the suit premises subject to the precondition that the usual undertaking is filed in this court latest by 31st March 2000 by the petitioner-defendant and all adult members of his family. It is clarified that there shall be no extension of time for the purpose of filing the undertaking. If the undertaking is not filed by the aforesaid date, the order pertaining to grant of time for the purpose of vacating the suit premises shall ipso facto stand vacated and the decree shall become executable forthwith.

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